the said company and section 128 of the Companies Act will reveal that the said Resolution No. 2 is in effect a ratification of the pre-incorporation contract.

In our view the substance of the letter of August 15, 1971 clearly falls within the ambit of section 35(1) of the Companies Act and was duly ratified by the said resolution. The appeal was allowed and the case remitted to the trial judge for hearing.

Appeal allowed.

Solicitors: *Drew & Napier.*

RE ROBINSON'S; PORTUGUESE MISSIONS IN CHINA AT SINGAPORE & ORS. v. COLLECTOR OF LAND REVENUE, SINGAPORE

[C.A. (Wee Chong Jin C.J., Chua & D'Cotta JJ.) September 29, 1977]

[Singapore — Case Stated No. 1 of 1977]

Land Acquisition — Acquisition within 6 months of land devastated or affected by fire — Market value — Compensation — Loss of future earnings — Case stated — Land Acquisition Act (Cap. 272), ss. 5(1) & 33(1)(d).

On November 21, 1972 a fire destroyed a three-storey building popularly known as "Robinson's" at Raffles Place. At the date of the fire the said building was held under a Lease for 999 years from 1826 by the Agent of the Commission for the Administration of the Estate of the Portuguese Missions in China at Singapore. It was also the subject of a lease from the Portuguese Missions in China to Robinson & Co. Ltd. for a term of 27 years commencing from July 1, 1963 and expiring on June 30, 1990. The Robinson's building was sub-leased in its entirety to Robinson & Co. (S) Pte. Ltd. by a Sub-Lease dated November 4, 1969 for an unexpired residue of a term of 27 years less one (1) day from July 1, 1965. At the date of the fire Robinson & Co. (S) Pte. Ltd. were the sole occupants of the said building.

On January 16, 1973 the President made a declaration under section 5 of the Land Acquisition Act declaring that the "Robinson's" site was needed for a public purpose. On January 17, 1973 the declaration was published in the *Government Gazette.* On February 7, 1973 the Collector of Land Revenue pursuant to section 8 of the Land Acquisition Act issued and served Notices on the agent of the Portuguese Missions in China at Singapore, Robinson & Co. Ltd. and Robinson & Co. (S) Pte. Ltd. giving them notice that the Government intends to acquire the Robinson's site and requiring them to appear at the office of the Collector of Land Revenue on March 7, 1973 to state *inter alia* the nature of their interest and the amount and particulars of their claims to compensation. The Portuguese Mission claimed $8.4 million as compensation. Robinson & Co. Ltd. and Robinson's & Co. (S) Pte. Ltd. jointly claimed $7.5 million as compensation for their joint interest. On September 5, 1974 the Collector of Land Revenue took possession of the Robinson site and on July 16, 1976 the Collector made his award under which he determined the compensation and awarded $5.6 million and apportioned it as to $3.1 million to the Portuguese Missions and the balance of $2.5 million to Robinson & Co. Ltd. and Robinson & Co. (S) Pte. Ltd. The Collector rejected the claim for loss of earnings by Robinson & Co. (S) Pte. Ltd. The appellants appealed to the Appeals Board constituted under the Land Acquisition Act. The questions in issue before the Board were shortly:

(a) In making his award the Collector applied the first and third provisos to section 33(1) of the Land Acquisition Act (before the amendment in 1973) and awarded one third of the vacant land value. This issue was disputed in principle.

(b) The Collector had made no award or alternatively failed to take into account in making his award of the claim by Robinson & Co. (S) Pte. Ltd. under section 33(1)(d) of the said Act as in force at the relevant time namely the claim for loss of actual earnings.

The Board being of the view that these two issues raised questions of law relating to the construction and application of the provisions of section 33 of the said Act, without proceeding to the determination of the appeal, stated a case on the questions of law for the opinion of the Court of Appeal. The questions of law as set out in the case stated were as follows:—

"(i) whether there has been in the present case 'an acquisition for any purpose specified in sub-section (1) of section 5 of this Act' of the subject land within a period of six months of the land being devastated or affected directly or indirectly by fire;

(ii) if, which is not admitted, the acquisition is held to have taken place within the six months' period contemplated by the Act how is the Board to interpret the requirement that it shall 'consider the market value of the land immediately before it was devastated or affected as aforesaid, having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters but without taking into account the value of any buildings or structures, permanent or otherwise on the land at the material time' in the context of the facts of the present case;

(iii) how is the Board to interpret section 33(1)(d) (before its amendment by the Land Acquisition (Amendment) Act 1973) with particular reference as to whether in determining the amount of compensation the actual loss of earnings of the third appellant, Robinson & Company (Singapore) Pte. Ltd. ought to be taken into consideration in the context of the facts of the present case."

Held: (1) the only intention behind the addition of the limiting words "in the case of any such acquisition within a period of six months" was to free the devastated land from the seemingly harsh effect of the three provisos as originally enacted so that where land is devastated by fire or any act of God and the Government is considering acquiring such land under the Act with the benefit of the three provisos to the then section 26(1) and the present section 33(1), the Government, if it decides to acquire it, must act under section 5(1) within 6 months of the devastation. Accordingly the answer to the first question was in the affirmative;

(2) the Board (and the Collector) in the context of the facts of the present case must consider the market value of the land immediately before its devastation by fire on the basis that it could not have been conveyed with vacant possession as it was subject to the leases aforesaid. For this purpose a lease was an encumbrance;

(3) in the context of section 33(1) of the Act if loss of future earnings was excluded from being the subject matter of a claim under paragraph (d) of section 33(1). there could never be a claim because there would never be any actual loss. In the context of this case the third appellant was entitled to have its claim for compensation for loss of actual earnings considered and to payment of the amount of compensation if any.

[Historical Note: The firm of Robinson and Company was originally founded by Philip Robinson and James G. Spicer in 1858 and was called Spicer & Robinson, with premises at Nos. 9 and 10 Commercial Square (now Raffles Place). In 1859 the business was sold to Robinson & Company and in 1881 this business moved to Battery Road where the old Medical Hall Building stood. In 1891 the busines moved back to Raffles Place close to the former Nos. 9 and 10 Commercial Square and in 1941 the business moved across the road to the building next door to Meyer Chambers.]

COURT OF APPEAL.

P.T.S. Boydell Q.C. for all the appellants with *H.M. Dyne* for the first and *L.P. Thean* for the second and third.

M. Karthigesu for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): On November 21, 1972 a fire completely destroyed a three-storey building with a basement floor known as Raffles Chambers and occupied by Robinson & Company (Singapore) Pte. Ltd. This building stood on land containing an area of 24,123 square feet and known as Lot No. 124 T.S.1. (hereinafter referred to as "the subject land").

At the date of the fire the subject land was held under a leasehold title for 999 years from April 24, 1826, by the Agent of the Commission for the Administration of the Estate of the Portuguese Missions in China at Singapore. It was also the subject of a lease from the Portuguese Missions in China to Robinson & Company Ltd. for a term of 27 years commencing from July 1, 1963 and expiring on June 30, 1990. The property had been sub-leased in its entirety to Robinson & Company (Singapore) Pte. Ltd. by a sub-lease dated November 4, 1969, for the unexpired residue of the term of 27 years less one day commencing from July 1, 1965. There have not, at any relevant time, been any other encumbrances. At the date of the fire, Robinson & Company (Singapore) Pte. Ltd. were the sole occupants of the subject land.

On January 16, 1973 the President made a declaration under section 5 of the Land Acquisition Act (Chapter 272) (hereinafter referred to as "the Act") declaring that the subject land was needed for a public purpose. On January 17, 1973 the declaration was published in the *Government Gazette*.

On February 7, 1973 the Collector of Land Revenue, pursuant to section 8 of the Act, issued and served notices on the Agent of the Portuguese Missions in China at Singapore, Robinson & Company Ltd. and Robinson & Company (Singapore) Pte. Ltd. (hereinafter collectively referred to as "the appellants") giving the appellants "notice that the Government intends to acquire" the subject land and requiring the appellants to appear at the office of the Collector on March 7, 1973, to state, *inter alia*, the nature of their interest in the subject land and the amount and particulars of their claims to compensation for those interests.

The Portuguese Missions claimed the sum of $8,440,000 as compensation for their interest in the subject land. Robinson & Company Ltd. and Robinson & Company (Singapore) Pte. Ltd. jointly claimed the sum of $7,522,684.00 as compensation for their joint interest in the subject land. In addition, Robinson & Company (Singapore) Pte. Ltd. claimed the sum of $7,522,410 for loss of earnings.

On September 5, 1974 the Collector took possession of the subject land.

On July 16, 1976 the Collector, pursuant to section 10 of the Act, made his award (an earlier defective award having been made on June 28, 1974) under which he determined the compensation which should be allowed for the subject land at $5,628,700 and apportioned the compensation awarded as to $3,121,114 to the Portuguese Missions and the balance of $2,507,586 to Robinson & Company Ltd. and Robinson & Company (Singapore) Pte. Ltd. jointly. The Collector rejected the claim for loss of earnings by Robinson & Company (Singapore) Pte. Ltd.

The appellants appealed to the Appeals Board constituted under section 19(1) of the Act and the appeal was heard on February 11, 1977. The questions in issue before the Board were: —

(a) In the Collector's grounds of award, he attributes to the subject land a vacant land value of $700 per sq. ft. or a total figure of $16,886,100. This figure is not in dispute. In making his award however the Collector has applied the first and the third provisoes to section 33(1) of the Act (before the amendment of section 33(1) by the Land Acquisition (Amendment) Act, 1973) and has awarded one-third of the vacant land value. This issue is in dispute in principle. The apportionment of the award is not in dispute.

(b) The Collector has made no award at all in respect of or alternatively has failed to take account in making his award of the claim by the third appellant, Robinson & Company (Singapore) Pte. Ltd. under section 33(1)(d) of the Land Acquisition Act as in force at the relevant time, namely, the claim for loss of actual earnings.

The Board being of the view that these two issues raise questions of law relating to the construction and application of the provisions of section 33 of the Act, accordingly, without proceeding to the determination of the appeal, stated a case on the questions of law involved for the opinion of the Court of Appeal. The questions of law as set out in the case stated are: —

"(i) whether there has been in the present case 'an acquisition for any purpose specified in sub-section (1) of section 5 of this Act', of the subject land within a period of six months of the land being devastated or affected directly or indirectly by fire;

(ii) if, which is not admitted, the acquisition is held to have taken place within the six months' period contemplated by the Act how is the Board to interpret the requirement that it shall 'consider the market value of the land immediately before it was devastated or affected as aforesaid, having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters but without taking into account the value of any buildings or structures, permanent or otherwise on the land at the material time' in the context of the facts of the present case;

(iii) how is the Board to interpret section 33(1)(d) (before its amendment by the Land Acquisition (Amendment) Act 1973) with particular reference as to whether in determining the amount of compensation the actual loss of earnings of the third appellant, Robinson & Company (Singapore) Pte. Ltd. ought to be taken into consideration in the context of the facts of the present case."

The relevant provisions are contained in section 33(1) of the Act (before its amendment by the Land Acquisition (Amendment) Act 1973) which read as follows: —

"33.—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall take into consideration the following matters and no others, namely: —

(a) the market value at the date of the publication of the notification under subsection (1) of section 3 of this Act, if the notification is within six months from the date

thereof followed by a declaration under section 5 of this Act in respect of the same land or part thereof, or in other cases the market value at the date of the publication of the declaration made under section 5 of this Act;

(b) ....

(c) ....

(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings; and

(e) if, in consequence of the acquisition, he is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to that change:

Provided that in the case of an acquisition for any purpose specified in subsection (1) of section 5 of this Act of any land devastated or affected directly or indirectly by fire, explosion, thunderbolt, earthquake, storm, tempest, flood or any act of God, or of any land immediately adjoining such devastated or affected land as is required for any such purpose, the Board shall not, in the case of any such acquisition within a period of six months of the land being devastated or affected as aforesaid, take into consideration the matters set out in paragraphs (a) and (e) of this subsection, but shall instead consider the market value of the land immediately before it was devastated or affected as aforesaid having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters, but without taking into account the value of any buildings or structures, permanent or otherwise, on the land at the material time:

....

And provided further that the market value of such land shall not exceed one-third of the value of such land had it been vacant land not subject to any such encumbrances, tenancies or occupation by squatters unless the Minister in his discretion, by notification in the *Gazette*, specifies otherwise."

The First Question

The words in quotation marks in the first question which we are asked to answer was taken from the first proviso to section 33(1) of the Act. Under the Act, a necessary step to acquire land is the publication by notification in the *Government Gazette* of a Presidential declaration that the land is needed for one of the purposes specified in section 5(1) of the Act. Under the Act, it is the Collector who has to determine the amount of compensation to be awarded for land acquired under the Act (see section 10). In determining the compensation the Collector must take into consideration the matters mentioned in section 33 (see section 15).

In determining the compensation to be awarded for land acquired under the Act, the Collector knows the precise date he must take into consideration in arriving at the "market value" of that land as the language of section 33(1)(a) is clear and explicit. But, under the first proviso to section 33(1), in determining the amount of compensation to be awarded "in the case of an acquisition for any purpose specified in sub-section (1) of section 5" of land "devastated by fire ... or any act of God" within a period of six months after such devastation, the Collector must disregard the market value of the devastated land at the date of the publication of the section 5(1) notification. He must, instead, consider the market value of the land immediately before it was devastated. Regrettably, the language of this first proviso is neither explicit nor clear. So we have to discover what the legislature intended when it used the words "in the case of an acquisition for any purpose specified in subsection (1) of section 5 of the Act" in the first proviso to section 33(1).

The scheme of the Act shows that there are several essential stages in any acquisition of land under the Act. Thus, when the legislature used the expression "an acquisition" in the first proviso to section 33(1), it is reasonable to infer that it was aware of these essential stages. Broadly speaking, these stages appear to us to be: —

(a) the first stage, which is the giving of official public notice that Government is acquiring land under the Act with sufficient particulars to identify the land; the giving of notice to persons who claim or may have an interest in the land of the fact that Government is acquiring it; and the giving of notice to and requiring all such persons to put forward before the Collector, at a fixed date and place, their respective interests in the land and the compensation they claim; (sections 5 to 9).

(b) the second or inquiry stage, which is when the Collector hears and considers the claims for compensation put forward and makes his award of the compensation which in his opinion should be allowed for the land; and the matters which he must consider or disregard in determining the amount of compensation; (sections 10 to 15).

(c) the third stage, which is when the Collector takes possession of the land, which, under normal circumstances, is after he has made his award. In cases of urgency he can take possession prior to his award; (sections 16 and 17).

(d) the final stage, which is when the land vests in the State free from all encumbrances upon entry in the land register under the Registration of Deeds Act or upon endorsement in the relevant folio of the land register under the Land Titles Act, as the case may be. This takes place after a notification or an instrument of acquisition has been given or lodged, as the case may be, by the Collector immediately on his taking possession of the land; (section 18).

Mr. Boydell, on behalf of the appellants, contends that on a true construction of the Act there is "an acquisition" only at the third or at the final stage. He contends that, on a strict construction, "an acquisition" takes place only when the land vests in the State under the provisions of the Act (section 18) because it is only when the title to the land is transferred to the acquirer that it can fairly be said the land is acquired. In any event, he contends, the earliest stage at which land is acquired under the Act is the stage when the Collector takes possession of the land.

In support of his first contention Mr. Boydell relies on the ordinary meaning of the word "acquisition" as found in the *Oxford English Dictionary* where "acquisition" is defined as meaning "the action of acquiring or obtaining or getting for oneself". In support of his second contention Mr. Boydell relies on three sections of the Act. The first is section 18, under which, after the taking of possession, all that

remains to be done in order to transfer the title to the State is a purely administrative act of the Collector in giving the notice under section 18(a) or lodging the instrument under section 18(b). The next section is section 48(1), under which Government loses its right to withdraw from the acquisition as soon as possession has been taken. Mr. Boydell's argument is that section 48(1) is a clear pointer to the taking of possession being the stage at which land is effectively acquired under the Act. The third section which is relied on as a further pointer is section 41 under which interest on the compensation is to run from the taking of possession, if compensation has not already been paid or deposited in court.

It is important to observe that at the second stage it is mandatory for the Collector, as soon as possible after the conclusion of the inquiry, to make his award of the compensation he thinks should be allowed for the land. It is important to note, also, that at this stage it is mandatory for the Collector, in determining the amount of the compensation, to take into consideration the matters mentioned in section 33 of the Act. In so far as these two important functions are concerned, the Collector is clearly not acting in an administrative but in a quasi-judicial capacity and must act impartially.

If the construction Mr. Boydell seeks to place on the words "an acquisition" is correct, the Collector, having completed the inquiry, when he is pondering over the amount of compensation he thinks should be allowed in his award, is in a dilemma. At that point in time he does not know which of the two market values i.e. market value according to section 33(1)(a) or market value according to the first proviso, he must take into consideration in arriving at his award for the land. He must decide on one of two alternative courses of action before he can give his award, namely: —

(1) do nothing and wait until six months after the date of publication of the section 5(1) notification; or

(2) ask the appropriate Minister, as a case of urgency, to direct him, under section 17(1) to take possession of the land whereupon he can take possession and immediately thereafter give the necessary notice or lodge the necessary instrument of acquisition whereupon the land vests in the State.

If the Collector decides on course of action (1) then the first and third provisoes do not apply and he can then decide the amount of compensation on the basis that the market value of the land is at the date of publication of the section 5(1) notification. This course would favour the person or persons entitled to the compensation awarded.

If the Collector decides on course of action (2) then the first proviso will operate and he can then decide the market value of the land on the basis that the market value is at the date immediately before the land was devastated and proceed to give effect to the rest of the first proviso and to the third proviso. This course would be unfair to the person or persons entitled to the compensation awarded and would favour the acquirer.

Whichever course the Collector adopts he would not be acting impartially and in our opinion this situation could not have been intended by the legislature. In our opinion the use of the words "in the case of an acquisition", bearing in mind the ordinary meaning of "acquisition" as the "*action of* acquiring . . .", indicate that the legislature was referring, in the first proviso, in general terms to land which is being acquired and was not referring to land which is being acquired and of which possession has been taken by the Collector, or to land which has vested in the State under section 18 of the Act.

In our opinion, on its true construction, the first proviso to section 33(1) means that where land has been devastated by fire or any act of God and that land is being acquired for a section 5(1) purpose within a period of six months after such devastation, the Board (and the Collector) in determining the amount of the compensation to be awarded must not take into consideration the market value of that land at the date of the publication of the section 5(1) notification but must instead take into consideration the market value of the land immediately before it was so devastated.

This construction is supported by the history of the legislation which introduced a different date for ascertaining the market value of land compulsorily acquired in the case of land devastated by fire or any act of God. It was first introduced by an enactment known as Ordinance 22 of 1961 which added three provisoes to section 26(1) (which is *in pari materia* to section 33(1) of the Act) of the Land Acquisition Ordinance (Cap. 248 of the 1955 Edition of the Laws of the Colony of Singapore). The material provisions of the first proviso to section 26(1) read:—

> "Provided that in the case of an acquisition for a public purpose of any land devastated by fire . . . or any Act of God . . . the court shall not take into consideration the matters set out in paragraphs (a) and (e) of this sub-section but shall instead consider the market value of such land immediately prior to such devastation . . . ."

By section 15 of the Land Acquisition Ordinance (which is *in pari materia* to section 15 of the Act) the Collector in determining the amount of compensation must take into consideration the matters mentioned in section 26(1).

It is thus plain that when Ordinance 22 of 1961 came into force there can be no ambiguity in the expression "in the case of an acquisition for a public purpose of any land devastated by fire . . . or any Act of God . . ." in the first proviso to section 26(1) of the Land Acquisition Ordinance. So far as the Collector is concerned when he is determining the amount of compensation, these words mean where the land that is being acquired for a public purpose is land devastated by fire or any act of God.

In 1966 by the Land Acquisition Act, 1966 which repealed the Land Acquisition Ordinance, section 33(1) and the provisoes thereto replaced section 26(1) and the provisoes thereto of the Land Acquisition Ordinance. Except for some alterations which are not material for our purposes, the only material differences are the substitution of "Board" for "court" and the addition in the first proviso of the words "in the case of any such acquisition within a period of six months" after the words "shall not". In our opinion the add-

ed words do not, and cannot be intended to, alter the meaning of the expression "in the case of an acquisition for (a public) purpose of any land devastated by fire . . . or any Act of God". The intention was clearly to limit the application of the provisoes to devastated land which is being acquired within six months of the devastation. In other words the intention was to take out of the operation of the provisoes devastated land which the Government had not yet decided to acquire under the Act within six months of the devastation. The clear intention, and in our opinion the only intention, behind the addition of those limiting words was to free the devastated land from the seemingly harsh effect of the three provisoes as originally enacted so that, where land is devastated by fire or any act of God and the Government is considering acquiring such land under the Act with the benefit of the three provisoes to the then section 26(1) and the present section 33(1), the Government, if it decides to acquire it, must act under section 5(1) within six months of the devastation.

Accordingly, our answer to the first question is in the affirmative.

The Second Question

The words in quotation marks in the second question are also taken from the first proviso to section 33(1) of the Act.

The relevant agreed facts are these. The State holds the freehold to the land subject to a lease for a term of 999 years from April 1826 in favour of the Portuguese Missions, the head lessee. On July 1, 1963 the head lessee created a sub-lease in favour of Robinson & Co. Ltd. for a term of 27 years expiring on June 30, 1990. The sub-lessee created a sub-sub-lease in favour of its wholly owned subsidiary, Robinson & Company (Singapore) Pte. Ltd. commencing on July 1, 1963 for the unexpired residue of its own term of 27 years, less one day. At the date of the fire the sub-sub-lessees, a trading company, were the sole occupants of the land.

The first thing to observe is that the expression land which "could not have been conveyed with vacant possession" is expressly defined in the first proviso itself as land which "was subject to encumbrances, tenancies or occupation by squatters". In the context of this definition, is land which is subject to a lease, subject to an encumbrance within the meaning of the first proviso? We are of the opinion that it clearly is and that the word "encumbrances" includes leases. It would, in our opinion, lead to an absurd result if a lease is excluded from the meaning of "encumbrance" in the context of section 33(1) and the first proviso thereto. Furthermore, in the context of ascertaining the market value of land it would be patently absurd to consider that land which is subject to a tenancy is land which cannot be conveyed with *vacant possession* but, if the same land were subject to a lease, that it is land which can be conveyed with vacant possession.

In arriving at our view that "encumbrance" includes a lease within the meaning of the first proviso we are aware of the provisions of the third proviso which reads:—

"And provided further that the market value of such land shall not exceed one-third of the value of such land had it been vacant land not subject to any such encumbrances, tenancies or occupation by squatters unless the Minister in his discretion, by notification in the *Gazette*, specifies otherwise."

The third proviso limits the opinion of the Collector and the Board as to the market value of devastated land which could not have been conveyed with vacant possession to an amount not exceeding one-third of the value of such land had it been vacant land not subject to any such encumbrances, tenancies or occupation by squatters. Although this fetter on the Collector and the Board must, on the view we take of the meaning of "encumbrance" in the first proviso, lead to a harsh result for the appellants and for others where the facts are similar, that is a matter for the legislature to rectify, if it thinks fit, and not for the court. In any event, the legislature has recognised this eventuality by enabling the appropriate Minister "in his discretion" to specify otherwise.

Accordingly, our answer to the second question is that the Board (and the Collector) in the context of the facts of the present case, must consider the market value of the subject land immediately before its devastation by fire on the basis that it could not have been conveyed with vacant possession as it was subject to the leases we have already described. But in the event that we are wrong, we now proceed to consider the second question on the basis that an encumbrance does not include a lease. On this assumption, what do the words in the proviso "having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters" mean?

Mr. Boydell on behalf of the appellants contends that these words must by necessary implication mean that the proviso is applicable only if in fact at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters. Mr. Karthigesu on behalf of the Collector, the respondent, contends that the proviso would apply, whether or not the land was subject to encumbrances, tenancies or occupation by squatters.

We think Mr. Boydell's contention is correct. In our opinion, it could not have been intended by the legislature that land compulsorily acquired, which land is not subject to any encumbrance, tenancy or occupation by squatters, should be given a market value on a statutory presumption that it was so subject. If that was the intention of the legislature, we do not doubt that the language used would have been different. In any event, the words being plainly ambiguous it would be wrong in accordance with the accepted canons of construction to give them a meaning which penalises the subject and leads to an irrational result. This would be the case if Mr. Karthigesu's contention is correct.

Let us illustrate. A freehold land (land X) of substantial acreage has a small owner occupied building on it which is devastated by fire and the land is acquired as it is needed for a section 5(1) purpose after the fire. If Mr. Karthigesu's contention is correct then by virtue of the first and third provisoes to section 33(1) in determining the amount of compen-

sation the market value of land X must be not more than one-third of the value of the land as vacant land immediately before the fire. Near to but not immediately adjoining this land is another freehold land (land Y) of similar acreage with an identical owner occupied building on it not affected at all by the fire, which is acquired at the same time under the Act. The market value of land Y is its full market value as at the date of publication of the section 5(1) notification. Such an absurd and irrational result could not have been intended by the legislature.

The Third Question.

Section 33(1)(d) reads as follows:—

"33.—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall take into consideration the following matters and no others, namely —

(a) ....

(b) ....

(c) ....

(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his... actual earnings."

It is not in dispute that the third appellant was actively trading up to the time of the fire. It is not in dispute that the fire completely destroyed the buildings on the subject land and that at the time of the acquisition the third appellant was not carrying on any trading or business activity on the subject land. In relation to the Third Question, the fundamental question is: were the actual earnings of the third appellant injuriously affected by reason of the acquisition? The Collector submits that the answer must be "No" because the actual earnings were not injuriously affected by reason of the acquisition but by reason of the fire which completely destroyed the buildings on the subject land. The argument is that "actual earnings" must be given its ordinary meaning and could not be construed to include future or potential earnings. The third appellant contends that the answer must be "Yes", the argument being that "actual earnings" must in the context mean provable earnings based on actualities in contrast to speculative earnings.

In our opinion the construction sought to be placed on the expression "actual earnings" by the Collector is wrong. In the context of section 33(1) of the Act, including the provisoes thereto, if loss of future earnings is excluded from being the subject matter of a claim under paragraph (d) of section 33(1), there could never be a claim because there would never be any actual loss. In our opinion, in every case where a claim is made under paragraph (d) for compensation for loss of earnings, the amount of compensation (if any) is a question of fact for the Collector to determine depending upon the evidence placed before him.

Accordingly, in the context of the facts of the present case, the third appellant is entitled to have its claim for compensation for loss of actual earnings considered and to payment of the amount of compensation (if any).

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Shook Lin & Bok; Allen & Gledhill.*

BRUNEI REPORT

SIMPOL BIN AHMAD v. KOH BEE TIN & ANOR.

[O.C.J. (Leonard J.) May 25, 1977]

[Brunei — Civil Suit No. 12 of 1976]

Practice and Procedure — Running down cases — Interlocutory judgment — Application to set aside — Brunei High Court (Civil Procedure) Rules 1970, O. 13 rr. 2, 5 and 13.

This was an application for an order that interlocutory judgment entered herein in default of appearance on February 25, 1976 and the final judgment obtained consequent thereon on March 11, 1977 be set aside on the ground that the interlocutory judgment was a nullity or alternatively on the ground that it was irregularly obtained. The application further prayed that the first and second defendants should have leave to defend and for the costs of the application.

It was argued in this case that the Brunei High Court (Civil Procedure) Rules, 1970 did not permit the entry of interlocutory judgment for damages for pain, suffering and loss of amenities.

Held: (1) under the rules of procedure interlocutory judgments may be entered in an action for tort even where the damages sought are for pain and suffering and loss of amenities and the practice of entering interlocutory judgment in running down cases in default of appearance which has hitherto been accepted as usual in Brunei should continue;

(2) in this case there was good reason for setting aside the judgment in that the statement of claim was admittedly in error in its description as to how the accident occurred; and therefore the interlocutory and final judgments would be set aside on condition *inter alia* that the defendants should enter appearance within 30 days and pay into court the sum of $25,000 (to abide the result of the action) together with a sum of $4,000 on account of costs thrown away as a result of the defendant's failure to appear.

Cases referred to:

(1) *Eyre* v. *Eyre* 45 S.J. 653.

(2) *Evans* v. *Bartlam* [1937] 2 All E.R. 646.

CIVIL SUIT.

F.S. Choo for the defendants/applicants.

David Clidero for the plaintiff/respondent.

Leonard J.: This was an application by summons inter partes on the part of the defendants for an order that the interlocutory judgment entered herein in default of appearance on the 25th of February 1976 and the final judgment obtained consequent thereon on the 11th of March 1977 should be set aside on the ground that the interlocutory judgment was a nullity or alternatively on the ground that it was irregularly obtained. The application further prayed that the first and second defendants should have leave to defend and for the costs of the application. I set aside the interlocutory and final judgments provided that the defendants should within 30 days enter an appearance, and pay into court the sum of $25,000 (to abide the result of the action) together with a sum of $4,000 representing a payment on account of costs thrown away resulting upon the defendants' failure to appear. I made it a further condition that at the trial the defendants should admit that at the time of the accident giving rise to the proceedings the first defendant was driving vehicle registered number B7790 as a result of a request made to her by the second defendant (her husband) over the telephone to the effect that she should "come to town and pick him up".